

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID D. DANIELS,

Petitioner,

Case No. 5:06-cv-140

v.

Honorable Paul L. Maloney

KENNETH McKEE,

Respondent.

**ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL
AND DENYING CERTIFICATE OF APPEALABILITY**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On July 29, 2009, the Court entered an opinion and judgment dismissing the petition. The Court also denied Petitioner a certificate of appealability. Petitioner now has filed a notice of appeal, a motion to proceed on appeal *in forma pauperis* (docket #44) and a motion for certificate of appealability (docket #45), which the Court will construe as a motion for reconsideration of its prior decision denying a certificate of appealability.

Sixth Circuit Internal Operating Procedure 5.1 provides that a \$450.00 docketing fee and a \$5.00 filing fee must be paid to the district court when a notice of appeal is filed. Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this court certifies that his appeal is not taken in good faith. Good faith is judged objectively, and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the petition were provided in the Court's

opinion denying the petition. The Court reaffirms its conclusion that Petitioner is not entitled to relief and that he has not shown the existence of an issue upon which reasonable jurists might differ. Petitioner's challenge to the sufficiency of the evidence (claim 1) is not so baseless, however, to render an appeal frivolous. The Court, therefore, grants the motion for leave to appeal *in forma pauperis*.

The Court previously denied Petitioner a certificate of appealability. For the reasons set forth in the opinion and judgment dismissing the petition, the Court reaffirms its denial of a certificate of appealability under 28 U.S.C. § 2253(c)(1). Accordingly:

IT IS ORDERED that Petitioner's motion to proceed on appeal *in forma pauperis* (docket #44) is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's motion for certificate of appealability (docket #45), construed as a motion for reconsideration, is **DENIED**.

Dated: September 1, 2009

/s/ Paul L. Maloney

Paul L. Maloney
Chief United States District Judge